



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

December 28, 2016

VIA E-MAIL

SHIRLEY THOMPSON
53743 HWY 78
BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-12378

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12378. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Burns Times Herald newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice *or* 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0892 or Joan.M.Smith@ wrd.state.or.us if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist
Transfer and Conservation Section

cc: T-12378
J R. Johnson, District 10 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)
Linda Lee Miller, CWRE # (*via e-mail*)

encs

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12378, Harney County)	APPROVING OF A CHANGE IN
)	POINTS OF APPROPRIATION,
)	ADDITIONAL POINTS OF
)	APPROPRIATION, AND PLACE OF
)	USE CHANGES

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

SHIRLEY THOMPSON
53743 HWY 78
BURNS, OR 97720

Findings of Fact

1. On May 9, 2016, SHIRLEY THOMPSON filed an application to change the points of appropriation and for additional points of appropriation and to change the place of use under Certificates 46775, 55569, 55570, 55571, and 85182. The Department assigned the application number T-12378.
2. Notice of the application for transfer was published on May 17, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 15, 2016, the Department contacted the applicant’s agent via telephone and email to notify them of deficiencies in the application. The deficiencies being: clarification was requested regarding the applicants/landowners; clarification was requested as to whether there is a “receiving landowner”; two of the maps were missing the location of the authorized wells; and minor inconsistencies within the application with regard to the well locations.
4. On October 21, 2016, the applicant’s agent submitted amended application pages and on October 25, 2016, the applicant submitted new maps resolving the deficiencies.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
--

Nov 14

x

5. On ~~December~~, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12378 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 14, 2016, for the applicant to respond. The applicant requested that the Department proceed with issuance of the Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

6. The first right to be transferred is as follows:

- Certificate:** 46775 in the name of NEVIN L THOMPSON (perfected under Permit G-5240)
- Use:** IRRIGATION of 287.3 ACRES and SUPPLEMENTAL IRRIGATION of 48.2 ACRES
- Priority Date:** SEPTEMBER 10, 1974
- Rate:** 4.01 CUBIC FEET PER SECOND (cfs), being 0.71 cfs from OLD WELL and 3.3 cfs from NEW WELL
- Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
- Source:** OLD and NEW THOMPSON WELLS within the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	33 E	WM	13	NE SE	OLD THOMPSON WELL: 2490 FEET NORTH AND 100 FEET WEST FROM THE SE CORNER OF SECTION 13
26 S	33 E	WM	13	NW SE	NEW THOMPSON WELL: 2490 FEET NORTH AND 1370 FEET WEST FROM THE SE CORNER OF SECTION 13

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres	Source
26 S	33 E	WM	13	SW NE		40.0	New Thompson Well
26 S	33 E	WM	13	SE NE		37.5	
26 S	33 E	WM	13	SE NW		40.0	
26 S	33 E	WM	13	NE SW		40.0	
26 S	33 E	WM	13	SE SW		40.0	
26 S	33 E	WM	13	NW SE		40.0	
26 S	33 E	WM	13	SW SE		40.0	
26 S	34 E	WM	18	NE SW		8.0	Old Thompson Well
26 S	34 E	WM	18	SW SW	4	0.5	
26 S	34 E	WM	18	SE SW		1.3	
Total:						287.3	

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres	Source
26 S	34 E	WM	18	SW NW	2	20.0	Old Thompson Well

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres	Source
26 S	34 E	WM	18	NW SW	3	19.5	
26 S	34 E	WM	18	SE SW		8.7	
Total:						48.2	

7. Transfer Application T-12378 proposes an additional point of appropriation approximately 350 feet and 1490 feet respectively from the existing points of appropriation "Old Thompson Well" and "New Thompson Well" located as follows:

Twp	Rng	Mer	Sec	Q-Q	Gov't lot	Measured Distances
26 S	34 E	WM	18	NW SW	3	NEWEST WELL: 2200 FEET NORTH AND 90 FEET EAST FROM THE SW CORNER OF SECTION 18

8. Transfer Application T-12378 also proposes a change in points of appropriation, described as follows, with the approximate distance in miles from the existing points of appropriation as identified below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distances	
						Old Thompson Well	New Thompson Well
26 S	34 E	WM	19	SE SW	WEST WELL: 1320 FEET NORTH AND 1480 FEET EAST FROM THE SW CORNER OF SECTION 19	1.3	1.4
26 S	34 E	WM	19	SW NE	NORTH WELL: 1230 FEET NORTH AND 170 FEET WEST FROM THE NE CORNER OF THE NW SE OF SECTION 19	1.0	1.2
26 S	34 E	WM	19	NW SE	MIDDLE WELL: 70 FEET SOUTH AND 40 FEET WEST FROM THE NE CORNER OF THE NW SE OF SECTION 19	1.2	1.4
26 S	34 E	WM	20	SE SW	EAST WELL: 17 FEET NORTH AND 123 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 20	2.0	2.2

9. Transfer Application T-12378 also proposes to change the place of use(POU) of the right in the table below the type of change is also described POA for point of appropriation and APOA for additional point of appropriation:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres	Type of Change
26 S	33 E	WM	13	NE NE		26.1	APOA/POU
26 S	33 E	WM	13	NW NE		28.9	APOA/POU
26 S	33 E	WM	13	SW NE		29.0	APOA/POU
26 S	33 E	WM	13	SE NE		26.0	APOA/POU
26 S	33 E	WM	13	NE SW		31.0	APOA/POU
26 S	33 E	WM	13	SE SW		31.7	APOA/POU
26 S	33 E	WM	13	NW SE		31.3	APOA/POU
26 S	34 E	WM	13	SW SE		31.6	APOA/POU
26 S	34 E	WM	18	NE SW		1.9	APOA/POU
26 S	34 E	WM	19	NE SW		2.3	POA/POU
26 S	34 E	WM	19	NW SW	3	16.6	POA/POU
26 S	34 E	WM	19	SW SW	4	20.0	POA/POU
26 S	34 E	WM	19	SE SW		10.9	POA/POU

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres	Type of Change
Total:						287.3	

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres	Type of Change
26 S	34 E	WM	18	SW NW	2	20.0	APOA/POU
26 S	34 E	WM	18	NW SW	3	19.5	APOA/POU
26 S	34 E	WM	18	SE SW		8.7	APOA/POU
Total:						48.2	

10. The second right to be transferred is as follows:

Certificate: 55569 in the name of NEVIN THOMPSON (perfected under Permit G-5183)

Use: IRRIGATION of 118.2 ACRES

Priority Date: APRIL 4, 1973

Rate: 1.48 CFS

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: JAMES WELL within the MALHEUR LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	34 E	WM	19	NW SE	70 FEET SOUTH AND 40 FEET WEST FROM THE NE CORNER OF THE NW SE OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	34 E	WM	19	NE SE	39.0
26 S	34 E	WM	19	NW SE	39.0
26 S	34 E	WM	19	SE SE	39.5
26 S	34 E	WM	20	NW SW	0.7
Total:					118.2

11. Transfer Application T-12378 proposes additional points of appropriation, described as follows, with the approximate distance in miles from the existing point of appropriation as identified below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from the authorized POA
26 S	34 E	WM	19	SE SW	WEST WELL: 1320 FEET NORTH AND 1480 FEET EAST FROM THE SW CORNER OF SECTION 19	0.5
26 S	34 E	WM	19	SW NE	NORTH WELL: 1230 FEET NORTH AND 170 FEET WEST FROM THE NE CORNER OF THE NW SE OF	0.3

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from the authorized POA
					SECTION 19	
26 S	34 E	WM	20	SE SW	EAST WELL: 17 FEET NORTH AND 123 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 20	0.9

12. Transfer Application T-12378 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	34 E	WM	19	SE NE	1.6
26 S	34 E	WM	19	NE SE	37.7
26 S	34 E	WM	19	NW SE	4.4
26 S	34 E	WM	19	SW SE	3.6
26 S	34 E	WM	19	SE SE	15.1
26 S	34 E	WM	20	SW NW	0.5
26 S	34 E	WM	20	NW SW	28.4
26 S	34 E	WM	20	SW SW	26.9
Total:					118.2

13. The third right to be transferred is as follows:

Certificate: 55570 in the name of NEVIN THOMPSON (perfected under Permit G-8242)

Use: IRRIGATION of 40.0 ACRES

Priority Date: MAY 8, 1978

Rate: 0.5 CFS

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the MALHEUR LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	34 E	WM	19	NW SE	70 FEET SOUTH AND 40 FEET WEST FROM THE NE CORNER OF THE NW SE OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	34 E	WM	19	SW SE	40.0

14. Transfer Application T-12378 proposes additional points of appropriation, described as follows, with the approximate distance in feet from the existing point of appropriation (POA) as identified below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from the authorized POA
26 S	34 E	WM	19	SE SW	WEST WELL: 1320 FEET NORTH AND	0.5

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from the authorized POA
					1480 FEET EAST FROM THE SW CORNER OF SECTION 19	
26 S	34 E	WM	19	SW NE	NORTH WELL: 1230 FEET NORTH AND 170 FEET WEST FROM THE NE CORNER OF THE NW SE OF SECTION 19	0.3
26 S	34 E	WM	20	SE SW	EAST WELL: 17 FEET NORTH AND 123 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 20	0.9

15. Transfer Application T-12378 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	34 E	WM	19	SE SW	18.0
26 S	34 E	WM	19	SW SE	0.6
26 S	34 E	WM	19	SE SE	21.4
Total:					40.0

16. The fourth right to be transferred is as follows:

Certificate: 55571 in the name of NEVIN THOMPSON (perfected under Permit G-8372)
Use: IRRIGATION of 82.4 ACRES
Priority Date: OCTOBER 18, 1978
Rate: 1.03 CFS
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL within the MALHEUR LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	34 E	WM	19	SW NE	1230 FEET NORTH AND 170 FEET WEST FROM THE NE CORNER OF THE NW SE OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	34 E	WM	19	SW NE	22.0
26 S	34 E	WM	19	SE NE	23.0
26 S	34 E	WM	19	NE NW	5.0
26 S	34 E	WM	19	SE NW	31.8
26 S	34 E	WM	20	SW NW	0.6
Total:					82.4

17. Transfer Application T-12378 proposes additional points of appropriation, described as follows, with the approximate distance in feet from the existing point of appropriation (POA) as identified below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from authorized POA
26 S	34 E	WM	19	SE SW	WEST WELL: 1320 FEET NORTH AND 1480 FEET EAST FROM THE SW CORNER OF SECTION 19	0.6
26 S	34 E	WM	19	NW SE	MIDDLE WELL: 70 FEET SOUTH AND 40 FEET WEST FROM THE NE CORNER OF THE NW SE OF SECTION 19	0.3
26 S	34 E	WM	20	SE SW	EAST WELL: 17 FEET NORTH AND 123 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 20	1.1

18. Transfer Application T-12378 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres
26 S	34 E	WM	19	SW NE		6.4
26 S	34 E	WM	19	SW NW	2	19.0
26 S	34 E	WM	19	SE NW		37.4
26 S	34 E	WM	19	NE SW		3.0
26 S	34 E	WM	19	SE SW		8.3
26 S	34 E	WM	19	NW SE		2.8
26 S	34 E	WM	19	SW SE		5.5
Total:						82.4

19. The fifth right to be transferred is as follows:

Certificate: 85182 in the name of NEVIN AND SHIRLEY THOMPSON and NW FARM CREDIT SERVICES, FLCA (perfected under Permit G-11679)

Use: IRRIGATION of 82.0 ACRES

Priority Date: MARCH 10, 1992

Rate: 1.025 CFS

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: A WELL in the MALHEUR LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	34 E	WM	20	SE SW	17 FEET NORTH AND 123 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	34 E	WM	20	NE SW	0.6
26 S	34 E	WM	20	SE SW	28.4
26 S	34 E	WM	20	NW SE	0.6
26 S	34 E	WM	20	SW SE	31.6

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	34 E	WM	29	NW NE	20.8
Total:					82.0

20. Transfer Application T-12378 proposes additional points of appropriation, described as follows, with the approximate distance in feet from the existing point of appropriation (POA) as identified below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from authorized POA
26 S	34 E	WM	19	SE SW	WEST WELL: 1320 FEET NORTH AND 1480 FEET EAST FROM THE SW CORNER OF SECTION 19	1.1
26 S	34 E	WM	19	SW NE	NORTH WELL: 1230 FEET NORTH AND 170 FEET WEST FROM THE NE CORNER OF THE NW SE OF SECTION 19	1.1
26 S	34 E	WM	19	NW SE	MIDDLE WELL: 70 FEET SOUTH AND 40 FEET WEST FROM THE NE CORNER OF THE NW SE OF SECTION 19	0.9

21. Transfer Application T-12378 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres
26 S	34 E	WM	19	NE SW		31.8
26 S	34 E	WM	19	NW SW	3	3.5
26 S	34 E	WM	19	NW SE		2.7
26 S	34 E	WM	20	SE SW		15.9
26 S	34 E	WM	20	SW SE		18.4
26 S	34 E	WM	29	NW NE		9.7
Total:						82.0

Transfer Review Criteria (OAR 690-380-4010)

22. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
23. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12378.
24. The proposed change would not result in enlargement of the rights.
25. The proposed change would not result in injury to other water rights.
26. All other application requirements are met.


Determination and Proposed Action

The change in point of appropriation, additional points of appropriation and change in place of use proposed in Transfer Application T-12378 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12378 is approved, the final order will include the following:

- 1. The change in point of appropriation, additional points of appropriation and change in place of use proposed in Transfer Application T-12378 are approved.*
- 2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 46775, 55569, 55570, 55571, and 85182, and any related decree.*
- 3. Water right Certificates 46775, 55569, 55570, 55571, and 85182 are cancelled.*
- 4. The quantity of water diverted at the new or additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
- 5. Water use measurement conditions:*
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device at each point of appropriation (new and existing).*
 - b. The water user shall maintain the meters or measuring devices in good working order.*
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
- 6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 7. The former place of use of the transferred right shall no longer receive water under the right.*
- 8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2018. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*
- 9. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 30 day of December 2016.


Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by a Reimbursement Authority Contractor and reviewed by Department Staff. If you have questions about the information in this document, you may reach Joan Smith at 503 986-0892 or Joan.M.SMITH@oregon.gov .

Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>